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Intersections of Race, Ethnicity, and the Law*

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This special issue focuses on social science research on race, ethnicity, and the law. Articles in the special issue consider the influence of race and ethnicity on substantive law, legal processes, and crime and deviance, and illustrate the tensions and contradictions that pervade the law's treatment of racial and ethnic minorities. The editors conclude that taking race and ethnicity into account may force scholars to reconceptualize theories about law's impact and that a greater number of racial and ethnic minority scholars would enrich the field of sociolegal studies.

The development of law is inextricably linked to matters of race and ethnicity. The stories of minority citizens—the texture of their lives, the prejudices they have endured, and their struggles for fair treatment—have been documented in the pages of legal opinions, as judges over the years have wrestled with fundamental questions of racial bias and inequality. Although law has the potential for protecting minorities from majority prejudice, law has often been a vehicle for oppression of racial groups (Higginbotham, 1978). The dual impact of law in both empowering and imprisoning minorities has proven to be a major theme in social science research on law.

Studying race, ethnicity, and the law is challenging for many reasons, not the least of which is the prime difficulty of defining what we mean by race (Yee,

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Fairchild, Weizmann, & Wyatt, 1993). Jones (1991) argues that the very notion of race is plagued with problems. Race is a socially constructed factor. Following 19th century biological concepts, it is typically defined by physical characteristics common to a geographically isolated and distinct population. Yet people are often categorized by race using arbitrary classification schemes. Furthermore, social scientists have tended to use race as an explanatory variable, without examining cultural or other factors that may lead to greater understanding of differences among people (Betancourt & Lopez, 1993). There are moves on a number of fronts to replace the category of *race* with labels that are more accurate, such as *ethnic identity, ancestry,* and *heritage* (Yee, 1991).

Even the choice of words used to identify minority individuals has social and political ramifications. Smith (1992) has written about the shifts in standard terms for members of racial and ethnic groups, particularly Blacks. During the 20th century, vigorous debates and disagreements marked shifts from *Colored* to *Negro* and then to *Black*. Current usage of *African American* emphasizes a cultural identification with the homeland that differs from the prior focus on skin color in racial terminology. Similarly, Americans of Mexican heritage might be variously identified as Latino, Hispanic, Chicano(a), or Mexican American, and each term carries a different set of connotations. Another perenially disputed issue is whether to capitalize racial identification terms (Smith, 1992). Those in favor argue that capitalization of *Black* treats African Americans in a manner parallel to other ethnic groups such as Italian Americans or Asian Americans.[1]

How law functions to oppress and liberate minorities has been a long-standing topic in the field of sociolegal studies. Even before the advent of systematic social science, early cases such as *Dred Scott v. Sandford* (1857) and *Plessy v. Ferguson* (1896) incorporated social perspectives on race (Tomkins & Oursland, 1991). In more recent times, psychologists and other social scientists have undertaken statistical analyses of race discrimination and offered them to the courts in such landmark cases as *Brown v. Board of Education* (1954), *Furman v. Georgia* (1972), and *McCleskey v. Kemp* (1987).

Issues of race, ethnicity, and law have taken on new urgency in recent years, as affirmative action and reverse discrimination claims as well as reapportionment battles and racial hate speech cases have come before the courts. The intersection of race and the law is frequently an explosive topic. During his Supreme Court confirmation hearings, African American judge Clarence Thomas characterized the airing of charges that Thomas had sexually harassed law professor Anita Hill as a "lynching" (Morrison, 1992). There was national outrage at the interracial violence depicted in videotapes of four Los Angeles police officers who beat Black motorist Rodney King and of Black men who beat White truck driver Reginald

[1] We use the term *race* though we recognize its problematic nature. When feasible, we employ expressions relating to ancestry or ethnic heritage rather than race. Yet it is difficult to avoid using words such as race, Black, and Hispanic, since many researchers and government indicators identify minority groups in this fashion. Following APA style and the most recent edition of the *Chicago Manual of Style,* all of the articles in the special issue capitalize the terms *Black* and *White* when they refer to racial groups.

Denny in subsequent riots. The trials of these crimes became symbolic events that tapped into racial tension in the United States, convincing many citizens that justice could not be obtained in the American legal system.

Race and Ethnicity in the Field of Psychology and Law

Given the critical importance of race and ethnicity to a social scientific analysis of law and legal processes, it is surprising that there has been relatively modest attention to the topic in the pages of *Law and Human Behavior*. In an early issue, Thomas Hillard (1978) described a "recent burst of interest in applications of psychology and the law in the black community" (p. 107). He argued that such applications were critically important given the substantial number of Blacks in contact with the legal system, the economic reality that many Blacks could not afford specialized expertise in their legal cases, and the racism inherent in the theories and methods of the discipline of psychology. Yet, a review of *Law and Human Behavior*'s back issues uncovered only a handful of articles directly pertaining to race or ethnicity, most of them in a special issue on discrimination edited by sociologist John Hagan in 1985. Race has been studied along with other factors in the perennial psychology–law topics of eyewitness identification (Brigham, 1980; Brigham & Ready, 1985) and jury decision making (Fitzgerald & Ellsworth, 1984; Hans & Vidmar, 1986). But systematic analysis of race and ethnicity appears to be more common in other social scientific approaches to law, and even in other subfields of psychology, than in psychology and law.

One potential explanation for the modest attention is the relative absence of minority scholars and practitioners in the field of psychology and law. We obtained current race and ethnicity figures for members of the American Psychology Law Society, Division 41 of the American Psychological Association. Those APLS members who identified their racial or ethnic background were 94% White, 3% Hispanic, 1% Black, 1% Asian, and 1% American Indian (American Psychological Association, Office of Demographics, 10/20/93). Thus, relatively few racial and ethnic minorities are active in the field of psychology and the law. Citing the underrepresentation of racial minorities in the profession, Haney expressed the concern that "our research agendas are badly skewed and our problem definitions are extremely limited by these demographic facts" (1993, p. 388).

Over the last several years, extended discussions of the APLS Executive Committee centered on methods for promoting the study of race and ethnicity in psychology and law. One suggestion was to undertake a special issue on the topic for *Law and Human Behavior*. This special issue is an example of the commitment of the journal and the APLS to promote and stimulate research on race, ethnicity, and the law. We also hope that it will provide new perspectives on the ways in which race and ethnicity influence the areas we study.

New Approaches to Examining Race, Ethnicity, and the Law

Some of the most stimulating contemporary work on race argues that incorporating race and ethnicity into theory and research will force scholars to recon-

ceptualize traditional theories (Crenshaw, 1992; Williams, 1991). The first three articles in the special issue examine the extent to which considering the perspectives of minority Americans might require substantial changes in theories, concepts, and professional practice in psychology and law.

In a thought-provoking article, Craig Haney and Aida Hurtado (1994) mount a strong challenge to the jurisprudence of employment discrimination, focusing on the commonly accepted notion of "merit" that is routinely invoked in such cases. They begin by reviewing the racial disparities in income and employment that continue to plague our nation 30 years after the civil rights movement held out the promise of racial equality. Haney and Hurtado argue that reliance on the concept of individual merit has obfuscated structural causes of racial disadvantage in the workplace and interfered with efforts to eliminate persistent discrimination. Although consideration of individual merit is central to cases of employment discrimination, the concept is used without careful definition by scholars and judges analyzing these cases, resulting in disadvantage to racial and ethnic minorities. Haney and Hurtado detail how the supposedly neutral concept of individual merit is based on a number of debatable assumptions. Haney and Hurtado's analysis leaves us with some significant questions. Is it possible to construct truly race-neutral tests and to develop a notion of merit that does not disadvantage those outside the dominant culture? Or do issues of race and ethnicity so fundamentally challenge reliance on the merit concept that entirely new approaches must be devised if group disadvantage is to be eradicated?

Psychologists are key witnesses in some of the most painful cases in the legal system: hearings concerning the termination of parental rights. Sandra Azar and Corina Benjet (1994) show how issues of race and ethnicity complicate the assessment of parental behavior and parent–child interactions in termination cases. Racial and ethnic biases pervade the area, affecting judgments of who is a fit parent, which families are likely to be abusive, and whether parents are complying with service plans. Azar and Benjet demonstrate that with ethnic and racial minority clients, behaviors that a mental health provider may view as showing a lack of cooperation with authorities and resistance to treatment can often be explained by linguistic barriers, cultural values, or differing life experiences. They propose a skills-oriented assessment approach that is more likely to apply to a range of ethnic contexts. The authors outline a research program to explore its utility.

E. Allan Lind, Yuen Huo, and Tom Tyler (1994) begin their article by acknowledging that ethnicity and gender might affect preferences for dispute resolution methods. Taking into account anthropological and feminist scholarship that reveals diverse approaches to resolving disputes among people of different cultures and between men versus women, Lind and his colleagues systematically examine the role of gender and ethnicity in dispute resolution using the dual methods of a scenario experiment and a study of choices in actual disputes. Using African American, Hispanic American, Asian American, and European American subjects, their studies show some differences but substantial overlap among ethnic groups and between men and women in preferences for specific dispute resolution mechanisms. The authors' cogent analysis of convergence and divergence

in dispute resolution provides an excellent basis for future work on ethnicity and procedural justice.

These three articles raise the problematic issue of cultural relativism in the law. Law reflects the standards, principles, and interests of those of privilege and power. The application of the same law to all, rich and poor, racial majorities and minorities, accords with the cultural value of equal treatment. Yet when law is applied to racial and ethnic minorities, implementing the standards that would be used with Whites may create unfairness and injustice. In a related vein, the courts have wrestled with whether minority defendants should be permitted to mount a "cultural defense" to a crime that takes into account their racial group's unique perspectives and behavioral patterns (Monahan & Walker, 1990).

Race and Ethnicity in Crime and Deviance

No consideration of race, ethnicity, and law can ignore the striking racial differences in criminal offending and victimization (LaFree, Drass, & O'Day, 1992). Minority group members are disproportionately arrested more often than Whites, regardless of crime type (Federal Bureau of Investigation, 1992). Racial and ethnic minorities are at a greater risk of both property crime and violent crime victimization than Whites (Bastian, 1990; Bureau of Justice Statistics, 1992). For example, homicide, our most serious offense, is the second and third leading cause of death among Latinos of Mexican and Cuban origin (Centers for Disease Control, 1986). It also is a particularly acute problem for African Americans. The risk of homicide victimization is six times greater for Blacks than for Whites, making it the major cause of death among young Black men in the United States (Centers for Disease Control, 1986).

A variety of theoretical interpretations attempt to explain the disproportionate involvement of minorities as criminal victims and offenders. Some scholars point to the racial bias inherent in the content of the laws and the structure of the legal system, disadvantaging minorities at every stage of the justice process. Other theorists offer psychological-level variables that differ across racial and ethnic groups and that are associated with minorities' social and economic disadvantage. For example, it is suggested that limiting access to opportunities such as educational attainment and economic well-being leads to increased crime rates (Merton, 1938). Minorities appear to be particularly vulnerable to economic changes in urban communities (Anderson, 1990; Moore, 1991; Wilson, 1987). Economic changes in the United States, specifically the shift from goods-producing to service-producing industries, resulted in a relocation of manufacturing industries out of the inner cities. As working class and middle class Blacks migrated to the suburbs, cities became increasingly dominated by the chronic ghetto poor (Wilson, 1987). The loss of the most talented and highly educated role models removed an important social buffer, leaving more concentrated poverty, joblessness, drug use, and crime (Sampson, 1987).

Two articles in the special issue directly address the association between race or ethnicity and crime. Each emphasizes the importance of considering psycho-

logical factors. Dorothy Taylor, Frank Biafora, and George Warheit (1994) explore the link between deviance and racial mistrust. Taking advantage of the heterogeneity of Miami's African-origin community, Taylor and her colleagues examine responses of African American, Haitian, and other Caribbean Island adolescent boys to various questions about law, the necessity for following the law, and willingness to violate the law. Though the majority of all the respondents report that it is important "to follow rules and obey the law," significant group differences exist in the extent of the agreement. Taylor and her colleagues discover a greater willingness to violate the law among African Americans and Haitians than Whites and Latinos. They find a link between racial mistrust and a strong disposition to deviance among the three African-origin groups. Taylor et al. are among the first to provide comparisons between different African-origin groups on disposition to deviance. The distinct attitudes that members of these groups hold regarding the law demonstrate the value of using more differentiated racial categories.

The relationship between race and homicide has long been linked to economic conditions (Bonger, 1905). The deprivation of social status and economic resources is theorized to lead to alienation, frustration, and aggression (Dollard et al., 1939). More recent analyses link measures of economic and/or racial inequality to high levels of homicide (Balkwell, 1990; Blau & Blau, 1982). In this issue, Katheryn Russell (1994) reconsiders the impact of racial inequality on criminal violence. She proposes a reformulation of the approach to studying racial inequality. Traditional research in this area has almost exclusively focused on official group level data. She argues that racial inequality should include microstructural concepts that incorporate external and internal processes. Doing so supplements group level data with assessments of individuals' perceptions and beliefs about racial inequality, providing a more complete and psychologically meaningful measure of the theoretical construct. By broadening the consideration of racial inequality beyond economics, Russell provides a unique and innovative reconceptualization of racial inequality and violence.

Race and Ethnicity in Legal Processes

The final two articles in the special issue examine the impact of race on legal decision making. How race influences judgments of guilt and sentencing is of perennial interest to the sociolegal community (e.g., Pfeifer, 1990; Sweeney & Haney, 1992). Social science evidence demonstrating a pattern of racial discrimination in the application of the death penalty was a significant factor in the Supreme Court's decision to overturn all capital sentencing statutes nationwide in 1972 (*Furman v. Georgia,* 1972). More recently, Baldus, Woodworth, and Pulaski (1990) found through multivariate statistical analyses of Georgia death penalty cases that Blacks who kill White victims are much more likely to receive a death sentence than other race of defendant and race of victim pairings (see also Gross & Mauro, 1989; *McCleskey v. Kemp,* 1987).

Robert Bohm (1994) takes a complementary approach, undertaking a descriptive study of race in capital punishment cases in Georgia. Using data from the two

circuits that rank first and second in the number of death sentences in the state, he discusses how the predominantly Black capital defendants confront a predominantly White system of justice. Indeed, across the United States, Blacks continue to be underrepresented in decision-making roles such as judge and jury (Fukurai, Butler, & Krooth, 1993). Bohm shows how Georgia prosecutors used peremptory strikes to remove most Blacks from capital juries, a pattern that appears to have been modified but not eliminated since the Supreme Court's decision in *Batson v. Kentucky* (1986) prohibiting race-based prosecutorial peremptory challenges. Bohm discusses how the absence of Blacks as formal legal actors can have deleterious consequences, creating racially discriminatory outcomes and race of victim effects like those found by Gross and Mauro (1989) and Baldus et al. (1990). His insightful article strikingly illustrates what Black capital defendants face.

R. Michael Bagby, James Parker, Neil Rector, and Valery Kalemba (1994) employ the experimental method of juror simulation to examine the effects of the race of the defendant and the victim in rape cases. Statistical analyses of actual rape trials have found more severe sanctions against Blacks, particularly in interracial rape cases. Using videotaped trial testimony with professional actors playing the roles of trial participants, Bagby and his colleagues examine how varying the race of the defendant and the victim affects the evaluations and the verdicts of Canadian mock jurors. Contrary to prior research, they find that the Black defendant is rated as having more positive appeal than the White defendant and is found guilty less often. The authors discuss some of the possible reasons for this outcome, including changes in racial prejudice, social desirability effects, and differences between the United States and Canada. Another possibility not developed by the authors is that the person who played the Black defendant was simply a more attractive individual than his White counterpart, which is consistent with the subjects' differential ratings of the defendants' positive appeal. Future research can test these explanations, but it is worth noting that the extralegal factor of positive appeal was a strong determinant of subjects' responses, indicating a psychological mechanism by which race and ethnicity may influence the legal decision-making process.

CONCLUSION

Together these articles highlight many intriguing yet problematic questions at the intersection of race, ethnicity, and the law. Nevertheless, a host of relevant issues are not examined. Immigration laws, prison conditions, public opinion about race and the law, and the role of law in interracial and intraracial conflict are just a few of the topics that deserve attention. How race interacts with other personal characteristics such as gender also demands greater scrutiny. For example, writing about the law's marginalization of Black women, Crenshaw (1992) has observed that "the terms of racial and gender discrimination law require that we mold our experience into that of either white women or black men in order to be legally recognized" (p. 404).

Furthermore, the variable of race itself must be carefully defined and operationalized, avoiding the problems identified by Graham (1992) and Yee et al. (1993). Many of the special issue articles compare Black and White subjects. This work is valuable, but we should not assume that findings from studies of Black minorities will predict the behavior of Latinos or Asian Americans. Taylor et al. (1994) find differences among racial and ethnic minorities, underscoring the critical need to study the reactions of a wider range of ethnic and racial groups. Work with diverse minorities holds the promise of producing a more differentiated theory of how racial and ethnic minority status affects human beings.

To place the articles in the special issue in a larger context, we asked Darnell Hawkins, a criminologist noted for his work on institutional racism, to write an Afterword. His commentary (Hawkins, 1994) examines law's dual and seemingly contradictory capacity for oppressing and liberating racial and ethnic minorities. Hawkins analyzes how the articles in the special issue exhibit in various ways the tensions and contradictions that pervade the law's treatment of race and ethnicity. His specific comments on the individual articles suggest new questions and approaches to research on race and the law.

As we noted earlier, the field of psychology and law includes relatively few minority scholars. The same problem exists in other disciplines. However, our task to increase the diversity of our field is more complicated because of our interdisciplinary identity. No one approach for training in psychology and law has emerged (Freeman & Roesch, 1992). Typical undergraduate students may take only one course in psychology and law, and unless they are individually mentored by a psycholegal scholar, they may not hear about disciplinary training options until they have already committed themselves to an alternate career pattern. Though the diversity of training approaches has some positive benefits, it may also make it more difficult to organize a concerted effort to recruit minorities.

There are, however, models from other scholarly societies that could be implemented. The American Sociological Association, in its MOST (Minority Opportunity Summer Training) program, identifies talented juniors who are racial minorities and potentially interested in a career in sociology. It sponsors a workshop every summer for two dozen minority students. Many workshop participants have gone on to graduate school in sociology (Marks & Andersen, 1993). Psychologist James Jones hosts a similar program at the University of Delaware for minority psychology majors in their junior year. Funded by NIMH, the summer workshop provides a range of research lectures and experiences to 10 ethnic minorities who have expressed interest in psychological research careers. Approximately two thirds of the students have gone on to graduate studies in psychology (James Jones, personal communication, January 18, 1994). The American Psychological Association and the American Sociological Association also have minority fellowship programs, funded largely through government grants, that support graduate study for racial and ethnic minorities (e.g., Jones, 1993).

The Law and Society Association, which has an interdisciplinary base like that of APLS, runs a summer institute for advanced graduate students and faculty at the early stages of their careers. Because many scholars who work on law and society topics are currently trained in the traditional disciplines, the institute

introduces participants to the range of theoretical and methodological approaches in sociolegal studies. The summer institute is not exclusively for minority participants, but in the first two years of the Institute, about a quarter of the participants have been racial and ethnic minorities (personal communication, Austin Sarat, November 10, 1993).

These models should be emulated to bring more minorities into the domain of psychology and law. A field of research that excludes ethnic minorities will provide an impoverished and incomplete picture of the interaction of law and society. The theoretical insights, research approaches, and experiences of minorities pertaining to law are likely to be different and to create a distinctive body of knowledge.

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